IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2242 OF 2004

Kashinath M. Patil ... Petitioner

Vs.

Employees Provident Fund
Organisation and Ors. ... Respondents

Mr. Arshad Shaikh with Mr. Sanjay Udeshi i/by S. Udeshi & Co. for Petitioner.

Ms. Suchitra Kamble i/by Suresh Kumar for Respondent Nos. 1 and 2.

CORAM : F.I. REBELLO,J.
DATED : SEPTEMBER 30, 2004

P.C.

1. Rule. Heard forthwith.

2. By the present petition, the petitioners are seeking relief by way of writ or order of direction in the nature of mandamus to direct Respondent Canara Bank to forthwith credit the SB Account No. 5491 of the Petitioner with any amounts debited from the account pursuant to letter dated 4.3.2004 of the 2nd Respondent and further writ or direction in the nature of mandamus directing the respondent Nos. 1 and 2 to withdraw letter dated 4.3.2004.

3. The Petitioner was Ex-employee working with M/s. Philips India Limited. The Petitioner has since retired. By the notice of 4.3.2004 Respondent Nos. 21 and 2 intimated to the Branch Manager of Respondent No. 3 Kalwa Branch that through oversight the Petitioner had been paid

excess while settling his Provident Fund in the year 1990-91 and as on date considering the interest an amount of Rs.1,07,781/- is payable by the Petitioner and accordingly directions to Respondent No. 3.

4. The matter was adjourned at the request of Respondent Nos. 1 and 2 to enable Respondent Nos. 1 and 2 to file reply. No reply has been filed till date.

5. The issue involves a simple question of law. The letter dated 4.3.2004 does not disclose what is the principal amount and what is interest claimed on that amount. The letter also does not disclose under which provisions of the Employees Provident fund and Misc. Provisions Act, 1952 the Respondent Nos. 1 and 2 exercised power for recovery of that amount which was supposed to be paid in the year 1990-91 and further right to claim interest on the said excess payment. The power if at all under Section 7A of the Act is in respect of the demand to the employer and not to employee. Apart from that the Petitioner herein was given no notice of the order of 4.3.2004. That order has civil consequences.

6. It is now well settled that before an order is passed which has civil consequences, a party against whom such order is passed must be given an

opportunity of being heard. No such opportunity was given. The order therefore, clearly suffers from the principle of natural justice and fair play. In the light of that writ as prayed for will have to go against respondents.

7. It is further made clear that if the Respondent Nos. 1 and 2 still contend that they have power to so exercise, then they will have to give appropriate notice to the petitioner disclosing the provisions under which they have exercised the power including power to levy interest and after giving suitable opportunity then only to pass appropriate order which in law they may be entitled to. The affidavit has been field by Respondent No. 3. It is pointed out that pursuant to that order, the amount which was directed in the sum of Rs.51,300/- has been placed in suspense account and it is further pointed out pursuant to interim order, the Petitioner was allowed to withdraw a sum of Rs. Three thousand Five Hundred only per month from the Bank Account No. 5491 with the Canara Bank, Kalwa Branch, Thane.

8. Considering what is stated above, petition made absolute in terms of Prayer Clauses (a) and (b). The Respondent No. 3 is directed to credit the Saving Account of the Petitioner by the amount of Rs.51,300/- forthwith and allow the Petitioner to operate his account in the normal course.

. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)